



DEATH SENTENCE AND HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

The question of the death penalty, often known as capital punishment, is a passionately disputed topic not only in our country but around the world. This particular issue drew the attention of the general public, the government, and our country's non-governmental groups. This particular study project examines capital punishment from a human rights standpoint. The research paper provides a quick overview of the subject. Then it discusses the international situation in regards to capital punishment, as well as the implementation of international conventions on the subject. It also discusses the situation in India with reference to the death penalty. The Indian situation is separated into three sections, the first of which is the legislation. In India, the constitutional law and judicial approach to the subject of capital punishment from a human rights viewpoint. Finally, the study effort draws parallels between various scenarios in which some choices have been found to be arbitrary and unreasonable under human rights law. In addition, the assignment promotes life imprisonment as an alternative to capital punishment.

KEYWORDS: Capital Punishment, Death Sentence, Law, Constitution.

INTRODUCTION:

A human person is entitled to certain basic rights, one of which is the right to life. The death of a human person is unquestionably a definite and irrevocable event. The statesman refers to the death penalty as the justice of vengeance. The death penalty refers to a person's execution as a form of punishment.

India is considered among the countries where the death penalty is applied, such as the United States, Japan, Pakistan, South Korea, and China. China is the country that executes the most death sentences. In several Arab countries, beheading and stoning are both practised in public.

The death penalty, sometimes known as capital punishment, is only used in the rarest of circumstances. There are several disputes over the death sentence occurring around the world among social activists, legal reformers, judges, jurists, attorneys, and administrators. Human beings are neither angels nor demons who will only do good or evil.

Because of human nature, it is impossible to totally eradicate crime from society; in fact, it is unimaginable. Criminals are a part of our society, and it is our responsibility to correct them and help them become productive citizens. Criminals' attitudes toward them need also alter in order for them to be able to exercise some of their basic human rights.

However, from the perspective of victims, it is critical to provide them with justice; otherwise, there is a risk that they will take the law into their own hands. And if this happens, chaos is certain to ensue. To avoid this circumstance, it is vital to ensure that punishment is specified and proportionate.

CAPITAL PUNISHMENT : INDIAN SCENARIO:

Legislation:

The Indian Penal Code, 1860, provides for the death penalty and life imprisonment as alternative punishments. In the case of *Mithu V. State of Punjab*, the Supreme Court ruled that section 303 is unconstitutional because it breaches articles 14 and 21 of the Indian Constitution. Despite the fact that the Indian people and non-governmental organisations are battling against inhumane and cruel punishment and the protection of human rights, the country's capital sentence remains in place. Although the judiciary has developed the idea of the rarest of the rarest situations, which states that death sentences should only be enforced on those who have committed serious crimes.

Constitutional Law:

Article 21 of the Indian Constitution guarantees everyone the right to life and personal liberty, as well as the right to live in dignity. No one's right can be taken away from them unless it is done in accordance with the law. This plainly demonstrates that the state has the authority to take away even one's right to life in the interest of Law and Public Order, as long as the procedure is followed according to the law.

However, like in the case of *Maneka Gandhi v. Union of India*, the procedure must follow due process. The procedure to be followed when capital penalty is imposed must be equitable, fair, and reasonable. When capital penalty is to be enforced, a fair trial based on natural justice principles and procedural procedure is critical. Our Indian Constitution also complies with the procedural require-

ments of Natural Law, which form the inner morality of Law, as follows:

- Only under exceptional circumstances should the death penalty be invoked.
- The death penalty is regarded as an extreme punishment to be applied only in rare circumstances.
- The accused is entitled to a hearing.
- Individualization of sentences should be considered in light of specific situations.
- The High Court must confirm the death sentence with sufficient consideration.
- Under Article 136 of the Constitution and Section 379 of the Cr.P.C., you have the right to appeal to the Supreme Court. The Supreme Court should conduct its own investigation into the matter.
- Under sections 433 and 434 of the Cr.P.C., as well as Articles 72 and 161 of the President or the Governors, the accused can seek a pardon, commutation, or other relief from their sentence. Articles 72 and 161 give the President and Governor discretionary powers that go beyond judicial power to intervene on the merits of the case; however, the judiciary does have limited power to review the case to ensure that all relevant documents and materials are presented to the President or Governor. The Governor's power should, however, be founded on the rule of law and rational reasoning, not on race, religion, caste, or political ties.
- Articles 21 and 22 of the Constitution provide the accused a fast and fair trial.
- Articles 21 and 22 guarantee that the accused will not be tortured.
- Articles 21 and 19 of the Indian Constitution grant the accused the right to free speech and expression while incarcerated.
- The accused has the right to be defended by attorneys who have been lawfully qualified and appointed.

JUDICIAL APPROACH:

In the case of *Jagmohan Singh v. State of Uttar Pradesh*, it was contended that death sentences for murder were unconstitutional under Indian Constitutional Articles 21 and 14. The counsel for the appellant contended that when the judiciary has discretionary power to impose death sentence or life imprisonment, imposing death sentence is a violation of Article 14 of the Constitution if in two similar cases, one person is sentenced to death and the other is sentenced to life imprisonment.

This argument has no merit, according to the Supreme Court. Because the facts and circumstances of one case cannot be the same as the facts and circumstances of the other case, it is difficult to expect uniform application of the law and per-

fectly consistent decisions if the law has given the judiciary discretionary power in the matter of sentence to be passed. This will remain sufficient ground for the scale of values of judges and their aptitude and perception.

The applicant's lawyer further claimed that the death sentence contradicts not only Article 14, but also Articles 19 and 21 of the Indian Constitution. The procedure is unclear in this situation since, after the accused has been found guilty, there is no further legal mechanism to assess if a death sentence or other less severe punishment is suitable in that case.

The Supreme Court, on the other hand, rejected the foregoing argument, holding that in serious situations such as murder, the accused is always given the opportunity to address the court on the issue of the death penalty. The court also ruled that deprivation of life is constitutionally lawful if done in accordance with the law's procedures.

The death penalty is neither irrational nor in the public interest. The law's philosophy of granting judges broad discretion in the subject of punishment stems from the inability of establishing criteria. Any attempt to establish guidelines for why one case should receive greater punishment while another receives less punishment would be impossible.

What is true in the case of other criminal offences is also true in the case of murder, which is penalised by section 302 I.P.C. There is no formula that can establish a suitable criterion for the infinite number of conditions that can alter the severity of a murder offence. The inability of establishing standards lies at the heart of Indian criminal law, which gives judges broad leeway in determining the severity of punishment.

In *Rajendra Prasad v. State of Uttar Pradesh*, Justice V.R. Krishna Iyer stated: The Indian Constitution's humanistic mandate, which is vital to the penal Code's punitive strategy, has scarcely been blasted by the courts in this realm of 'life or death' at the hands of the law. Section 302, IPC, and section 354(3) of the Code of Criminal Procedure must be read in the human rights of Part III and IV, as further illuminated by the Preamble to the Constitution, in the Post-Constitutional period.

According to Article 19(2) through 19(6) of the Indian Constitution, it is constitutionally permissible to swing a criminal out of corporeal existence when the security of the state and society, public order, and the general people's interests are at stake. Article 19 of the Constitution requires rationality, while Article 14 requires non-arbitrariness. The Court also noted that there are some unusual circumstances that leave the court with no choice but to execute the criminal in order for society to progress and survive. Justice V.R. Krishna Iyer was an outspoken supporter of the death penalty's repeal.

By a majority of 4:1 in *Bachan Singh V. State of Punjab*, the Supreme Court reversed its previous decision in *Rajendra Prasad V. State of Uttar Pradesh*, holding that capital punishment under section 302 of the Indian Penal Code does not violate Article 21 of the Indian Constitution. The International Covenant on Civil and Political Rights, which India is a signatory to, does not completely eliminate the death sentence. However, the death penalty must be imposed in a reasonable manner and not arbitrarily. In the majority of serious offences, the death penalty should be enforced.

In this case the Court held that:

Bloodlust should be avoided by judges. Resistance to taking a life through laws' instrumentally is predicated on a genuine and persistent respect for the dignity of human life. That should only be done in the most extreme of circumstances, when the alternative choice is unquestionably ruled out.

The question in *Vatheeswaran v. State of Tamil Nadu* was whether delaying the execution of capital punishment violated Article 21 of the Indian Constitution, and whether, as a result, death sentences should be replaced with life sentences. The Court ruled that delaying the execution of the death penalty is unjust, unfair, irrational, and inhumane, and that it deprives the convict of his essential human rights, including the right to life and personal liberty, as protected by Article 21 of the Indian Constitution.

The Court observed:

Making all reasonable allowances for the time required for appeal and reconsideration, we believe that a delay in the execution of a death sentence of more than two years should be considered sufficient to entitle the person sentenced to death to invoke Article 21 of the Constitution and ask for the sentence to be quashed.

As a result, as decided in the case of *Maneka Gandhi*, due process, i.e. a just, fair, and reasonable process, does not end with the reasonable pronouncement of a death sentence, but rather extends to the correct and due execution of the punishment. In this case, there was a two-year delay in the execution of the order.

The Court found that while a timely trial is a key component of Part III of the Constitution, delaying the execution process violates the convict's fundamental right because every moment he waited for his execution was terrifying for him.

The U.P. High Court modified a death sentence to life imprisonment in the case

of *State of U.P. v. Dharmendra Singh* on the grounds that the accused had spent three years in a death cell after the court's final judgement for execution because he was dying every moment.

CONCLUSION:

Death as a punishment has haunted the human mind for millennia. If the death penalty is imposed, the prerequisites for the preservation of human rights in India's Criminal Justice Administration must be met. Delay in execution is not uncommon in our country, and it so violates Article 21 of the Indian Constitution, as it is a violation of a person's basic human rights as well as the Universal Declaration of Human Rights. Any punishment for a crime must be fair, just, adequate, reasonable, and proportionate to the offence, and it must never be excessive in comparison to the crime's nature.

In circumstances where the execution is postponed, the convict becomes increasingly terrified throughout the time he waits for his execution, which adds to his brutal and degrading punishment.

The execution of *Dhananjay Chatterjee* in 2004, after fourteen years in a death cell, and then *Md. Afzal's* case of capital punishment in 2006, reignited a debate about speedy justice, fair trials, the protection of human rights of those facing death sentences, their human dignity, and the victim's logical perspective in maintaining law and order in society.

The death sentence is a contentious issue in India, attracting attention from the general public, the government, and non-governmental organisations. Despite the fact that India has ratified the majority of international human rights accords, we still retain capital penalty in our laws. According to our legal system, capital punishment should be used only in the most exceptional of circumstances and for exceptional causes. The President of India is given powers under Article 72 of the Indian Constitution, including the ability to grant pardons and suspend, remit, or commute penalties in certain circumstances.

Whether the punishment is death or life imprisonment is largely determined by the court or the composition of the court's bench. Various rulings illustrate that there are no fixed standards for determining the length of time it takes to carry out a death sentence or any other factor. Although there was a fourteen-year delay in *Dhananjay Chatterjee's* execution, the sentence was not commuted to life imprisonment, whereas there have been cases where the death sentence was commuted to life imprisonment after a two-, three-, or nine-year delay, citing that the delay in execution violated Human Rights and fair procedure.

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4. See supra note 5, at 956-59.
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6. AIR 1980 SC 898. See also (1980)2 SCC 684, 715 para 88.
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